

The complaint

Mrs D and Mr D complain Alwyn Insurance Company Limited wrongly declined their claim for cover under their legal expenses insurance policy.

Where I refer to Alwyn this includes their agents and claims handlers acting on their behalf.

What happened

In October 2016 Mrs D and Mr D instructed a conveyancing firm (C) to act on the purchase of a property (Property A). They intended to move into Property A to help resolve their financial difficulties at the time. In the end they were able to get back on track and didn't need to sell their existing property (Property B). So they decided to let Property A.

In 2017 they fell into debt and took a buy-to-let mortgage on Property A. In around May 2021 the lender discovered Mrs D and Mr D's title to Property A hadn't been properly registered, so their loan wasn't secured. They contacted C to find out what steps were being taken to resolve the matter. When no progress was made, they asked for a copy of C's file and found that title had been rejected.

In late August 2021 Mrs D and Mr D took out legal expenses insurance (LEI) with Alwyn which came into effect on 7 September. On 21 September Mrs D and Mr D received a letter from the lender's lawyers informing them of the problem. Mrs D and Mr D made a claim on their LEI policy to take action against C and the seller of Property A.

Alwyn rejected the claim. They said there was no cover as the claim Mrs D and Mr D wished to make didn't involve a dispute about the purchase or sale of their home. And whilst there might be cover for a dispute about the purchase of goods or services, that claim was excluded since the dispute existed before the policy began.

Mrs D and Mr D said their claim was about the service they'd received from C in relation to the purchase of Property A. And since they weren't aware of the dispute before they took out the LEI policy, their claim should be covered.

Alwyn didn't uphold Mrs D and Mr D's complaint, so they brought it to the Financial Ombudsman Service. Our investigator said the claim was covered and Alwyn should deal with it. Mrs D and Mr D accepted her view, but Alwyn didn't respond. So, the complaint was passed to me to decide. I recently issued a provisional decision, an extract of which follows:

"What I've provisionally decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I'm sorry to hear of the difficult position Mrs D and Mr D find themselves in. I'm issuing a provisional decision to give the parties the chance to make further comments. That's

because Mrs D and Mr D's claim for cover to pursue the seller of Property A hasn't been considered so far.

In line with the relevant Financial Conduct Authority rules relating to insurance, we'd expect Alwyn to deal fairly and promptly with Mrs D and Mr D's insurance claim and not to decline it unreasonably. I've considered their complaint against that background.

The starting point is the terms and conditions of Mrs D and Mr D's policy under which Alwyn have rightly considered their claim. They say:

'This insurance will provide assistance to pursue or defend [Mrs D and Mr D's] legal rights in a range of issues affecting everyday life including:

- ...
- *Disputes over the purchase of goods and services*
- *Disputes over the purchase or sale of **your home**'.*

Both those types of dispute fall within the 'Insured incident 2: Consumer Contract Disputes' section of the policy which says the cover provided is for the legal costs and expenses to

*'Pursue or defend a dispute arising from a breach or alleged breach of contract entered into by an **insured person** for:*

- ...
- b) buying or hiring in services;*
- ...
- d) buying or selling **your home**'.*

The section says:

'Please note that:

(i) the contract must be entered into in a personal capacity and not for an insured person's business use..."

'Home' was defined in the policy as:

*'The private residence, normally occupied by **you** ...as a principle or holiday home, located in the **territorial limit** at the following address:*

[Mrs D and Mr D's home address]'.

Cover is subject to the terms and conditions of the policy which include the following exclusion on which Alwyn rely:

'There is no cover for:

1) Claims arising before this insurance started

*Any event or dispute which an **insured person** was aware of, or should reasonably have been aware of, which could give rise to a claim under this insurance and existed or happened before this insurance first started'.*

Mrs D and Mr D have claimed for cover to pursue not only C but also, or alternatively, the seller of the property.

The dispute with C relates to the conveyancing service C provided. Arguably that is a

dispute relating to an alleged breach of contract entered into for buying a property. A claim against the seller is likely to be made on that basis.

*The question as to whether Property A falls within the definition of “home” is therefore relevant. On balance I don’t think it does. Even though Mrs D and Mr D planned to live there, I’m not aware they ever did. I don’t think it was ever their home. Even if I’m wrong about that ‘home’ is defined as Property B, not Property A, in the policy. So, I don’t think the section relating to ‘buying or selling **your home**’ provides cover here.*

I’ve gone on to consider if the policy provides cover under “buying or hiring in services”. As I’ve mentioned, Mrs D and Mr D’s relationship with the seller is likely to have been governed by the contract for the purchase of the property. The seller wasn’t providing them with services. So, there is no cover under this part of the policy to pursue a claim against the seller.

However, C was providing Mrs D and Mr D with conveyancing services. So, on the face of it, the claim for cover to pursue them falls under the ‘buying or hiring in services’ section of the policy. Alwyn acknowledged it might but said it wasn’t covered since Property A had been bought to let out for business purposes. And they said cover was excluded anyway as the issues giving rise to the claim arose before the policy began.

Mrs D and Mr D say their plan was initially to live in Property A. But they were able to stay in Property B when their circumstances changed. I’ve no reason to doubt what they say. And I think it’s reasonable to conclude Mrs D and Mr D planned to buy Property A in a personal capacity. Since the purchase wasn’t for business reasons, it wouldn’t be fair for Alwyn to decline their claim on that basis.

I’m satisfied from the evidence Mrs D and Mr D have provided they weren’t aware of the mistake C had allegedly made until around 22 September 2021 and had no reason to think there was a problem before then. The lender’s lawyers have confirmed they were instructed by the lender to write to Mrs D and Mr D, which they did on 21 September 2021. Mrs D and Mr D say they got the letter the following day. So, I don’t think it’s fair to apply the exclusion.

Bearing the above in mind, I don’t think Mrs D and Mr D have LEI cover to pursue a claim against the seller. But they are covered to pursue a claim against C subject to the other terms and conditions of the policy, including whether there are reasonable prospects of success. Alwyn should therefore accept their claim and deal with it on that basis.

My provisional decision

Mrs D and Mr D’s LEI policy provides cover for them to pursue C under the ‘Insured incident 2: Consumer Contract Disputes... b) buying or hiring in services’ section. Alwyn Insurance Company Limited should now deal with the claim subject to the remaining terms and conditions of the policy.”

What I’ve decided – and why

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

The parties have accepted my provisional decision. So, I uphold the complaint for the reasons I explained there.

Putting things right

Alwyn should deal with Mrs D and Mr D's claim as I've directed below.

My final decision

Mrs D and Mr D's LEI policy provides cover for them to pursue C under the '*Insured incident 2: Consumer Contract Disputes... b) buying or hiring in services*' section. I direct Alwyn Insurance Company Limited to deal with their claim subject to the remaining terms and conditions of the policy.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D and Mr D to accept or reject my decision before 15 February 2023.

Julia Wilkinson
Ombudsman